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* Will comply with LR 1A 10-2 by December 28, 2013

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American Board of Internal Medicine*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

REVEREND DOCTOR KEITH ALAN
LASKO,

Plaintiff,

v.

AMERICAN BOARD OF SURGERY, INC.;
AMERICAN BOARD OF MEDICAL
SPECIALTIES, INC.; AMERICAN BOARD
OF INTERNAL MEDICINE, INC.; JOSEPH
B. COFER; DAVID M. MAHVI; JO
BUYSKE; MARK A. MALANGONI;
GABRIEL L. BEVILACQUA; MITCHELL S.
GOLDBERG; and SAUL EWING, LLP,

Defendants.

Case No. 2:13-cv-01893-JAD-(NJK)

**AMERICAN BOARD OF INTERNAL
MEDICINE'S MOTION TO DISMISS
AMENDED COMPLAINT**

(ORAL ARGUMENT REQUESTED)

Pursuant to Rules 8(a), 8(d), 12(b)(6), and 41(d) of the Federal Rules of Civil Procedure, defendant American Board of Internal Medicine ("ABIM"), by and through its counsel of record, Ballard Spahr LLP, hereby moves to dismiss the Amended Complaint of plaintiff Reverend Doctor Keith Alan Lasko.

1 This Motion is made and based on the following Memorandum of Points and Authorities,
2 the pleadings and papers on file herein – including ABIM’s motion to dismiss the initial
3 complaint (Doc. 15), which ABIM incorporates herein – and any oral argument the Court may
4 consider on this Motion.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 On November 12, 2013 – the same day ABIM filed its motion to dismiss Rev. Lasko’s
7 initial complaint (Doc. No. 15) – Rev. Lasko filed an “Amended Verified Complaint” (Doc. No.
8 19) that suffers from the same fatal defects as the initial complaint. Accordingly, ABIM
9 incorporates herein and relies upon its motion to dismiss the initial complaint, which is attached
10 hereto as Exhibit A. In summary, although it is shorter than the initial complaint, the Amended
11 Complaint fails to satisfy the pleading requirements of Rule 8 of the Federal Rules of Civil
12 Procedure and does not plausibly state any claim against ABIM.

13 Like the initial complaint, the Amended Complaint fails to provide a “short and plain
14 statement of the claims showing the pleader is entitled to relief” as required by Rule 8(a)(2). Nor
15 does the Amended Complaint include “simple, concise, and direct” allegations as required by
16 Rule 8(d)(1). And though Rev. Lasko has truncated his complaint, it is substantively unchanged.
17 Rev. Lasko still intersperses among his “charges” broad criticisms of the medical profession
18 generally and asides about his supposed religious motivations for creating and conducting
19 business through illegitimate medical organizations. And he asserts unrecognized and otherwise
20 unactionable legal conclusions that cannot entitle him to relief. For instance, while “Charge
21 One” ostensibly asserts “Violation of the Sherman Antitrust Act, Violation of the Clayton Act,
22 Interference with Interstate Commerce,” Rev. Lasko, across 15 pages, raises monopolization
23 (Am. Compl. at 9), unlawful tying arrangements (*id.*), libel (*id.* at 11), defamation (*id.*), the
24 Hobbs Act (*id.* at 12), tax fraud (*id.* at 12), and First Amendment issues (*id.* at 15). Thus, the
25 Amended Complaint does not correct the deficiencies of the original complaint, and fails to
26 provide the Court and the defendants with anything approaching “simple, concise, and direct”
27 allegations or “a short and plain statement of the claims showing the pleader is entitled to relief.”
28

1 Accordingly, the Amended Complaint should be dismissed pursuant to Rule 41(b). *See*
2 McHenry v. Renne, 84 F.3d 1172, 1179 (9th Cir. 1996). (*See also* Doc. No. 15 at 5-7.)

3 Also like the initial complaint, the Amended Complaint fails to allege sufficient factual
4 matter “to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550
5 U.S. 544, 556 n.3 (2007). It is replete with conclusory allegations, formulaic recitations of legal
6 standards, and naked assertions of implausible facts. (*See* Am. Compl. at 9 (nonsensically
7 asserting that that ABIM “had tying-in arrangements” with various subspecialties of internal
8 medicine); *id.* at 12 (nakedly asserting that ABIM “defamed and libeled” Rev. Lasko); *id.* at 17
9 (arguing without substantiation that ABIM “interfered with Reverend Lasko’s First Amendment
10 Rights and destroyed his organization and religious mission”). Under the Supreme Court’s
11 decisions in Twombly and Ascroft v. Iqbal, 556 U.S. 662, 678 (2009), such allegations must be
12 disregarded.

13 Moreover, to the extent the Amended Complaint could possibly be read to assert any
14 charges against ABIM specifically, none of them plausibly states a claim against ABIM. In
15 Charge One, Rev. Lasko mentions a number of theories of antitrust liability (*see* Am. Compl. at
16 9, 12, & 13 (referring to monopolization, tying, and conspiracy)), but fails to include any
17 allegations substantiating the required elements of these claims. (*See* Doc. No. 15 at 10 & 10
18 n.5.) Moreover, in Charge Four, asserting “Defamation, Libel, False Light” (Am. Compl. at 22),
19 Rev. Lasko fails not only to allege that ABIM made a false statement about Rev. Lasko, but also
20 to specify which defendant made which statement, impermissibly grouping ABIM together with
21 defendants ABS and ABMS. *See Hardy v. Global Options Servs., Inc.*, No. 2:13-cv-00514, 2013
22 WL 6059154, at 2-3 (D. Nev. Nov. 14, 2013) (holding that a complaint fails to plead a claim for
23 defamation when “[i]t does not specify which defendants made [the allegedly defamatory]
24 statement”). (*See also* Doc. No. 15 at 10-11 & 11 n.6.) Accordingly, Rev. Lasko again fails to
25 state a claim against ABIM.

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1 For all the reasons set forth above and in ABIM's motion to dismiss the initial complaint,
2 the Court should dismiss the Amended Complaint with prejudice and allow ABIM such other
3 and further relief as the Court finds just and proper.

4 Respectfully submitted,

5 BALLARD SPAHR LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of November, 2013, and pursuant to Fed. R. Civ. P. 5(b), a true and correct copy of the foregoing *American Board of Internal Medicine's Motion to Dismiss Amended Complaint* was served on the following via this Court's CM/ECF filing system:

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And to the following via U.S. Mail, postage prepaid thereon, AND hand delivery:

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